HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.8926 and 9544 of 2007

Dated:20.06.2007

Between:

Smt.Aritakula Padmaja.

…Petitioner

and

Special Officer and Competent Authority, Urban Land Ceiling, Visakhapatnam, and others.

…Respondents

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.8926 and 9544 of 2007

COMMON ORDER:

In these two Writ Petitions, the petitioner is the same. They came to be filed in the matter of purchase of land by the petitioner admeasuring 726 square yards in survey No.31-7 situated at China Waltair, Visakhapatnam. Therefore, they are being disposed of at the stage of admission by this common order, after hearing learned counsel for the petitioner and learned Assistant Government Pleader for Revenue (Urban Land Ceiling).

The brief fact of the matter is as follows. The said land is allegedly owned by Dasari Nellayya and Dasari Poli Reddy alias Pollayya Reddy, who are sons of late Sithayya. They offered to sell the land to the petitioner and executed an Agreement of Sale-cum-General Power of Attorney, dated 22.11.2006, after receiving the entire sale consideration, as alleged by the petitioner. It is also alleged that before doing so, the vendors obtained necessary permission/endorsement under Section 26 of the Urban Land (Ceiling and Regulation) Act, 1976 ('the Act', for brevity), vide Endorsement No.S.R./2328/06/B1, dated 06.11.2006, to the effect that the Special Officer and Competent Authority has no intention of exercising first option to buy the lands. After receiving the endorsement, the agreement of sale was registered vide document, dated 22.11.2006.

The petitioner alleges that the third respondent was trying to get assignment of land admeasuring 280 square yards forming part of survey No.17, which is classified as 'Gedda' (canal bed). When she failed to do so, she approached the Special Officer, Urban Land Ceiling (ULC), and Joint Sub Registrar-I with a false complaint. Acting

on the same, the Special Officer issued proceedings R.C.No.9/07/B1, dated 23.01.2007, declaring the endorsement under Section 26 of the Act as null and void and requesting the Joint Sub Registrar-I to take necessary action against the registered document No.5868 of 2006, in favour of the petitioner. Aggrieved by the same, W.P.No.8926 of 2007 is filed.

A perusal of the impugned order would show that the Special Officer issued necessary endorsement under Section 26 of the Act in respect of the land admeasuring 726 square yards comprised in survey No.31-7 situated at China Waltair. It is alleged in the affidavit accompanying the Writ Petition that the third respondent tried to get assignment of land in survey No.17, which is classified as 'Gedda' and when she was not successful in getting assignment, she prevailed over the Special Officer and Joint Sub Registrar-I, as a result of which, the impugned order came to be passed. Based on this, it is submitted that if only a notice had been given and proper inspection is made by the competent authority, it would have been proved that the land purchased by the petitioner in survey No.31-7 and land in survery No.17 (Gedda) are altogether different. The submission appears to be valid. Indeed, learned Assistant Government Pleader does not dispute that the impugned order was not preceded by a show cause notice especially when the same resulted in civil consequences of depriving the petitioner of the property, which she purchased for valuable consideration under a registered Agreement of Sale-cum-General Power of Attorney with possession.

In W.P.No.9544 of 2007, it is alleged that revenue officials and police officials tried to dispossess the petitioner even while the earlier writ petition is pending. Therefore, a declaration and direction is sought.

As noticed supra, learned Assistant Government Pleader does not dispute that the Special Officer did not issue any notice to the petitioner and proceeded to cancel the endorsement under Section 26 of the Act, acting on the representation of the third respondent as well as the Joint Sub Registrar-I. Non-issuance of notice itself is fatal for the exercise of powers in the circumstances of this case. The flaw is incurable.

Therefore, both the Writ Petitions are disposed in the following manner. The impugned order/proceedings, dated 23.01.2007, in W.P.No.8926 of 2007, is set aside and the matter is remitted to the Special Officer and Competent Authority, ULC, Visakhapatnam, with a direction to issue notice to the petitioner, obtain necessary explanation and pass appropriate orders. It shall be open to the petitioner to request for personal inspection by the Special Officer or revenue officials working in his office. Till this exercise is completed and appropriate orders are passed, there shall be *status quo* as on today. No costs.

(V.V.S.RAO, J)

20.06.2007
GJ